

November 20, 1989

REPORT TO THE HONORABLE

MAYOR AND CITY COUNCIL

BELMONT PARK - MISSION BEACH PARK - ITEM 335, COUNCIL AGENDA
NOVEMBER 21, 1989

The matter of amending the Mission Beach Precise Plan, the General Plan, and rezoning of Mission Beach Park to conform to the requirements of Proposition G, the Save Mission Beach Park (Belmont Park) Initiative, was continued from the Council meeting of October 31, 1989, for comments from this office as to any legal problem there may be in specifying in the Mission Beach Precise Plan that, when the lease expires in March 2037, commercial use of the property will automatically terminate.

The question was raised by Councilman Henderson's memorandum dated October 27, 1989, copy attached. For unknown reasons, this office apparently did not receive a copy of Councilman Henderson's memorandum until Friday, November 17.

It is correct that this office suggested that the 2037 date for automatic termination of the commercial use not be placed in the language amending the Mission Beach Precise Plan. The reason is that the City Council has previously determined that the Belmont Park lessee has obtained vested rights under its lease with the City which it entered into in March, 1987. The lease contains the following provision:

7.13 Right of First Refusal. Upon the expiration of this Lease, and upon the condition that the LESSEE has fully complied with the terms and conditions of this Lease during the Lease term, or cured any monetary breaches within fifteen (15) days after notice hereof and non-monetary breaches within a reasonable time after notice thereof, CITY agrees that LESSEE shall have the right of first refusal to enter into a new Lease for the Premises upon such terms and conditions as are determined appropriate in the sole discretion of the City Council. The right of first refusal shall be contingent upon a finding by the City Council that

it is desirable and in the public's best interest to continue the uses of the property as specified in this Lease. In the event the CITY determines

to utilize the premises for other uses, the LESSEE shall not have a right of first refusal. If the CITY does determine to continue to Lease the Premises for the uses approved under this Lease, CITY shall advise LESSEE of proposed terms and conditions at least one year prior to the expiration of the initial term hereof. In the event LESSEE and CITY are unable to agree upon terms and conditions within one hundred eighty (180) days after said notice to LESSEE, CITY may Lease the property to another party so long as the Lease contains substantially the same terms and conditions as were rejected by LESSEE. In any event, any and all rights of first refusal shall expire two years following the expiration of this Lease in the event CITY and LESSEE have not entered into a new Lease of the Premises.

The above language clearly grants the Lessee the right to have the City consider whether or not to extend the lease prior to the expiration date in 2037. It does not appear appropriate for the present City Council to purport to make the determination called for by the City Council which will be in office in 2036.

If the present City Council wishes to insert language limiting the existing use to the period ending in 2037, such language may be included since the precise plan is merely a "planning" tool. However, if such language is added it is recommended that additional language reflecting the existence of the "Right of First Refusal" in the lease also be included.

Respectfully submitted,
JOHN W. WITT
City Attorney

HOV:ps:263.9(x043.1)
Attachment
RC-89-50